IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

The State of Rajasthan and others
...Defendant-appellants
Versus
Jagdish Prasad Kuldeep ...plaintiff-respondent

S.B. Civil First Appeal No.44/01 against the judgment and decree dated 3.5.2000 passed by Shri M.R. Choudhary, Addl. District Judge No.5, Jaipur City, Jaipur in Civil Suit No. 59/99.

Date of Judgment ::: December 13, **2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mrs. Sadhna Bhatt, Deputy. Government Advocate for the appellants
Mr. M.M. Ranjan for the respondents

BY THE COURT:

Having heard learned counsel for the parties, the delay of 183 days in filing the appeal is condoned.

At the request of counsel for both the parties, arguments have been heard for final disposal of the appeal at the admission stage.

The plaintiffs filed a suit against the defendant with the averments that he gave on rent his house to

the defendants on 21.12.1986 @ Rs. 840/- per month, for the purposes of hostel. Later on the defendants increased the rent w.e.f. 1.8.1991 in accordance with B.S.R. Rate and fixed the rent at Rs. 2447/- per month. In 1995, at the request of defendants, the plaintiff got the rented premises re-constructed, thereby constructing 7 rooms, bramadah, latrine, bath-room and floor having Kota stone. According to the plaintiff, total area of rented premises with the defendants is 152.53 square meters at ground floor and 15.32 square meters at the first floor. In addition to the constructed portion, there is open area measuring 772.88 square meters. Plaintiff averred that after making aforesaid construction, he handed over the building to the defendants on 1.6.1996 and after getting the rent assessed by the Public Works Department, he raised a demand of rent at the rate of Rs. 6738 per month. However, the defendants declined to pay rent @ 6738/- per month and continued to pay rent @ 2680 per month. With these averments the plaintiff prayed for rent @ 6738/- per month w.e.f. 1.6.1996.

In the agreement Ex.2 there is a clause that plaintiff would receive rent from the defendants @ Rs.

8000/- w.e.f. 1.6.1996 and/or he would be entitled to get rent at the rate that may be determined by the Public Works Department. Accordingly, the plaintiff submitted an application on 17.8.1986 before the Public Works Department and the Public Works Department, in turn, determined the rent at the rate of Rs. 6738/- per month and the plaintiff has claimed monthly rent at the rate determined by the Public Works Department. The plaintiff has been able to prove the above fact by cogent and reliable evidence, both ocular and documentary. The plaintiff through letters Exs. 3 and 4 have requested the concerned authorities to pay the rent at the rate fixed by the Public Works Department. He also served a notice Ex. 13 stating therein that PWD has determined the rent at the rate of Rs. 6738/- per month, but the defendants failed the reply the same. In this view of the matter, the impugned judgment and decree passed by the learned trial court call for no interference by this court.

That apart, learned counsel for both the parties have stated at the bar that after the order dated 18.4.2002 passed by this court, the defendants have deposited the decreetal amount with the learned trial

court and the plaintiff has already withdrawn the amount. Later on, it is given out that old tenancy stood terminated and the parties have created new tenancy and thus, for the reason that new tenancy has come into existence, the present appeal virtually becomes infructuous.

For the reasons aforesaid, the present appeal being devoid of merit is liable to be dismissed.

Consequently, the appeal is dismissed with no order as to costs.

(Khem Chand Sharma), J.

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